

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 14, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2016AP1529

Cir. Ct. No. 2014CV963

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

RIVER VALLEY BANK,

PLAINTIFF-RESPONDENT,

V.

BECKER PROPERTIES OF WAUSAU LLC,

DEFENDANT,

CABINTEK, LLC,

DEFENDANT-THIRD-PARTY

PLAINTIFF-APPELLANT,

V.

ROBERT G. BECKER AND JOEL BECKER,

THIRD-PARTY DEFENDANTS.

APPEAL from an order of the circuit court for Marathon County:
GREGORY B. HUBER, Judge. *Affirmed and cause remanded with directions.*

Before Stark, P.J., Hruz and Seidl, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Cabintek, LLC, appeals an order granting summary judgment in favor of River Valley Bank foreclosing a lease against Cabintek. River Valley argued it was entitled to foreclosure of Cabintek’s leasehold interest because of its preexisting mortgage lien against the leased property, and because Cabintek’s affirmative defenses and counterclaims failed as a matter of law. The circuit court agreed.

¶2 Cabintek argues summary judgment was inappropriate because there remain genuine disputed issues of material fact regarding its affirmative defenses and counterclaims. Meanwhile, River Valley moves this court for sanctions, arguing that Cabintek filed its brief late, Cabintek filed a false certificate of service, and the instant appeal is frivolous. We affirm the circuit court’s order and also determine that Cabintek’s appeal is frivolous. We therefore grant River Valley’s motion for sanctions and remand this matter to the circuit court to determine and then award River Valley’s costs and attorney fees associated with this frivolous appeal.

BACKGROUND

¶3 River Valley was the mortgagee on property owned by Becker Properties of Wausau, LLC. Beginning in 2013, Becker Properties and another business, Becker Communications, Inc., entered into a series of forbearance

agreements with River Valley in which Robert Becker, Joel Becker, Andrew Becker, and Sue Ellen Becker agreed to personally guarantee the debt secured by the mortgage.¹

¶4 In March of 2014, Cabintek entered into negotiations to lease some of the mortgaged property from Becker Properties. At the time of the lease negotiations, Becker Properties was subject to a forbearance agreement with River Valley. On June 1, 2014, Cabintek and Becker Properties executed a lease which contained provisions granting Cabintek an option to purchase and the right of first refusal for any space not currently being leased.²

¶5 On November 24, 2014, River Valley filed this mortgage foreclosure action against Becker Properties, alleging Becker Properties' failure to comply with the payment provisions of the forbearance agreement. River Valley named Cabintek as a junior lienholder in the complaint. River Valley and Becker Properties then came to an agreement for an uncontested foreclosure, and the circuit court entered a judgment of foreclosure and order for sale of the property against Becker Properties only.

¹ Robert Becker, Sue Ellen Becker, and Becker Communications had signed continuing guarantee agreements for the debt prior to the first forbearance agreement.

In the forbearance agreement, River Valley agreed not to foreclose on Becker Properties' loan for a period of three months, and the individual Beckers, Becker Properties, and Becker Communications agreed to a number of terms, including a shortened redemption period. The initial agreement was renewed multiple times, and it was in effect at all times relevant to the litigation.

² The option to purchase provided that, if Cabintek exercised the option within five years of execution of the lease, 75% of its payments under the lease up to that point would be applied to the purchase price.

¶6 Shortly thereafter, Cabintek filed affirmative defenses and counterclaims against River Valley, as well as cross-claims against Robert Becker and Joel Becker. Cabintek asserted the following affirmative defenses: (1) River Valley's complaint failed to state a claim; (2) Cabintek had no liability for any damages; (3) bad faith, unclean hands, and breach of an implied or constructive trust; and (4) waiver, estoppel and laches. Cabintek also asserted counterclaims against River Valley for tortious interference with contract, breach of the implied covenant of good faith and fair dealing, and equitable subordination. In addition, Cabintek requested a declaration of interests against River Valley and reasserted all of its counterclaims as additional affirmative defenses.

¶7 River Valley moved for summary judgment of foreclosure against Cabintek. After briefing was complete, Cabintek informed the circuit court that Joel Becker had recently filed for bankruptcy. The circuit court then issued a written decision and order granting summary judgment to River Valley, denying Cabintek's affirmative defenses, and dismissing Cabintek's counterclaims. The court also noted that the automatic stay relating to Joel's bankruptcy proceeding did not apply to River Valley's claim for foreclosure against Cabintek.³ Cabintek now appeals.

DISCUSSION

¶8 We review the grant or denial of summary judgment de novo, and we apply the same standard as does the circuit court. *Mach v. Allison*, 2003 WI

³ The record is unclear as to the disposition, if any, of Cabintek's cross-claims. In any event, the cross-claims are not at issue on appeal. The circuit court's order granting River Valley's motion for summary judgment was a final order, as it resulted in River Valley's dismissal from the case.

App 11, ¶14, 259 Wis. 2d 686, 656 N.W.2d 766. Summary judgment shall be granted if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. WIS. STAT. § 802.08(2) (2015-16).⁴ A factual issue is genuine if the evidence is such that a reasonable jury could return a verdict in favor of the non-moving party. *Baxter v. DNR*, 165 Wis. 2d 298, 312, 477 N.W.2d 648 (Ct. App. 1991). A material fact is one that is of consequence to the merits of the litigation. *Schmidt v. Northern States Power Co.*, 2007 WI 136, ¶24, 305 Wis. 2d 538, 742 N.W.2d 294. Any reasonable doubt as to the existence of a genuine issue of material fact must be resolved against the party moving for summary judgment. *Id.*

¶9 Under the summary judgment methodology, the circuit court first examines the pleadings to determine whether they state a claim and present issues of material fact. *Preloznik v. City of Madison*, 113 Wis. 2d 112, 116, 334 N.W.2d 580 (Ct. App. 1983). If the complaint states a claim and the pleadings show the existence of factual issues, the court examines the moving party's affidavits for facts to determine whether that party has made a prima facie case for summary judgment. *Id.* If the moving party has made a prima facie case for summary judgment, the court examines the affidavits submitted by the opposing party for evidentiary facts and other proof to determine whether a genuine issue exists as to any material fact, or reasonable conflicting inferences may be drawn from the undisputed facts, and therefore a trial is necessary. *Id.*

⁴ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

A. River Valley's prima facie case for foreclosure against Cabintek

¶10 Cabintek concedes that River Valley established a prima facie case for foreclosure against Becker Properties but asserts River Valley failed to establish a prima facie case for foreclosure of Cabintek's leasehold interest. However, in doing so Cabintek confuses our summary judgment analysis. Cabintek presents no material questions of fact as to River Valley's prima facie case for foreclosure of Cabintek's property interest, but instead relies upon its affirmative defenses and counterclaims to support its claim that disputed issues of material fact exist to defeat summary judgment.

¶11 Termination of a lease of previously mortgaged real estate is governed by WIS. STAT. § 708.02, which provides: "If property subject to lien created by mortgage or land contract is leased after the lien has attached, the lease is subject to termination at the time the interest of the lienor is terminated." Here, there is no dispute that Cabintek leased the property after River Valley's mortgage lien attached. Cabintek does not argue that the race-notice statute⁵ defeats the priority of River Valley's properly recorded mortgage, and there is no dispute that River Valley properly recorded the mortgage prior to execution of Cabintek's lease.

¶12 Moreover, Cabintek's lease specifically references the priority of any preexisting mortgage. The lease states: "This Lease and all rights of Tenant hereunder shall be subject and subordinate to the lien of any and all mortgages that

⁵ The Wisconsin race-notice statute provides that a conveyance that is not properly recorded is void as against any subsequent purchaser of the same real estate or any portion of the same real estate whose conveyance is recorded first. WIS. STAT. § 706.08(1)(a).

may now or hereafter affect the Premises” The lease also states that Becker Properties was required to provide Cabintek with a subordination and non-disturbance agreement from River Valley.⁶ However, it is undisputed that Cabintek never received an executed subordination and non-disturbance agreement from River Valley. River Valley had rejected Cabintek’s proposed non-disturbance agreement because River Valley objected to the terms of its option to purchase. River Valley then proposed a non-disturbance agreement that would allow Cabintek to continue to occupy the property, but which would not require River Valley to honor the option to purchase in the event of Becker Properties’ foreclosure. Cabintek did not agree to River Valley’s proposed non-disturbance agreement and, ultimately, a non-disturbance agreement was never signed.

¶13 As a result, we conclude that River Valley established a prima facie case for foreclosure of Cabintek’s tenancy. We next consider Cabintek’s affirmative defenses and counterclaims to determine if they raise material questions of fact preventing summary judgment.

⁶ Under the lease, Becker Properties agreed to provide a subordination and non-disturbance agreement from River Valley stating that, in the event of a foreclosure on the leased property, River Valley would not, as long as Cabintek was in compliance with the terms of the lease: (1) terminate the lease or disturb Cabintek’s possession of the property, or any additional portion of the property thereafter leased by Cabintek from Becker Properties; (2) terminate any of Cabintek’s rights under the lease; or (3) name Cabintek in any foreclosure action. River Valley was also to agree to give advance written notice of any foreclosure proceedings to Cabintek.

B. Affirmative defenses and counterclaims

1. Unclean hands

¶14 Cabintek contends River Valley is not entitled to foreclosure of its leasehold interest because River Valley “comes before the Court with ‘unclean hands.’” Cabintek states this argument is based on the equitable nature of foreclosure actions. Cabintek concedes that River Valley “may have made an initial showing that it was entitled to foreclosure,” but it argues that relief should have been denied so that the circuit court could have determined the nature of River Valley’s actions. Specifically, Cabintek asserts River Valley has unclean hands because “[t]he [l]ease would not have come about without River Valley’s encouragement and facilitation,” and “River Valley instructed [Becker Properties] to obtain tenants for the property.” Cabintek also claims that River Valley’s failure to supply a non-disturbance agreement demonstrates its unclean hands.

¶15 For relief to be denied to a plaintiff in equity under the unclean hands doctrine, the defendant must show the alleged conduct constituting unclean hands caused the harm from which the plaintiff seeks relief. ***Security Pac. Nat’l Bank v. Ginkowski***, 140 Wis. 2d 332, 339, 410 N.W.2d 589 (Ct. App. 1987). “[I]t must clearly appear that the things from which the plaintiff seeks relief are the fruit of *its own* wrongful or unlawful course of conduct.” ***Id.*** However, Cabintek offers no factual support in the record for its contention that River Valley instructed Becker Properties to obtain tenants for the property or that it was instrumental in the leasing process. In addition, even if River Valley gave such “instruction” to Becker Properties, or if it was “instrumental in the leasing process,” Cabintek fails to explain how doing so would constitute wrongful or unlawful conduct to support its unclean hands claim as a matter of law. Further,

the evidence demonstrates that River Valley *was* willing to provide a non-disturbance agreement, even though the terms were not to Cabintek's satisfaction.

¶16 To support its contention that River Valley instructed Becker Properties to obtain tenants for the property, Cabintek relies on the deposition of Robert Becker, in which he stated: “[Leasing the property] was one of our goals that was known to [River Valley] that would create some income and accomplish part of the goal to offset the loan payment.” Then Robert was asked: “So this was positive news because the bank wanted you to have a lease which would help with the cash flow, which would help you to perform on their loan; is that correct?” Robert responded, “Correct.” Robert also stated that River Valley never discouraged Becker Properties from leasing the property.

¶17 As further support of River Valley's role in the procurement of the lease, Cabintek cites an email from Brent Madson, an officer of River Valley. In the email, Madson responds to a message from Joel informing Madson that Becker Properties entered into a letter of intent to lease the property to Cabintek. Madson's email replied, “That is positive news.”

¶18 Cabintek provides no other evidence to indicate River Valley's “instrumental” role in the lease. The record conclusively establishes that it was Becker Properties, not River Valley, who negotiated to lease the property to Cabintek. Cabintek's argument therefore fails as a matter of law because it has not offered any evidence that would reasonably support a finding that River Valley induced, instructed, encouraged or facilitated the lease. River Valley's general encouragement to lease the property and its positive statement made after the lease was negotiated between Becker Properties and Cabintek does not give rise to any

inference—much less any reasonable inference—of River Valley’s wrongful or unlawful conduct. *See Ginkowski*, 140 Wis. 2d at 339.

¶19 Cabintek also argues that River Valley’s failure to provide a non-disturbance agreement in accordance with the lease between Cabintek and Becker Properties, along with River Valley’s supposedly instrumental role in procuring the lease, demonstrates its malicious intent. However, Cabintek fails to explain the relevance of River Valley’s failure to execute a non-disturbance agreement to an unclean hands analysis.

¶20 At best, the evidence Cabintek presented indicates only that Becker Properties’ goal to lease the property was known to River Valley, and that River Valley supported Becker Properties’ plans to attempt to meet its obligations under the forbearance agreement. We cannot conclude, on this record, that River Valley undertook any wrongful or unlawful course of conduct, much less sought relief from the result of that course of conduct. Therefore, Cabintek’s unclean hands claim plainly fails as a matter of both fact and law.

2. *Tortious interference with contract*

¶21 Cabintek claims that River Valley tortiously interfered with its contract with Becker Properties. The elements of a claim for tortious interference with a contract are:

- (1) the plaintiff had a contract or a prospective contractual relationship with a third party, (2) the defendant interfered with that relationship, (3) the interference by the defendant was intentional, (4) there was a causal connection between the interference and damages, and (5) the defendant was not justified or privileged to interfere.

Briesemeister v. Lehner, 2006 WI App 140, ¶48, 295 Wis. 2d 429, 720 N.W.2d 531.

¶22 Cabintek does not point to any evidence in the record supporting these elements. Instead, Cabintek makes vague assertions as to River Valley’s allegedly wrongful conduct toward it during its lease negotiations with Becker Properties. These arguments are undeveloped because Cabintek provides no analysis as to how River Valley’s actions constitute tortious interference. We decline to address these undeveloped arguments. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (we need not consider inadequately developed arguments).

¶23 Cabintek fails to explain whether the alleged tortious interference was in the creation of the contract at issue—the lease—or in the termination of the lease contract by foreclosure. While Wisconsin recognizes a cause of action for tortious interference with prospective contract negotiations, this claim is predicated on the contract having been prevented by such interference. *See Cudd v. Crownhart*, 122 Wis. 2d 656, 659-60, 364 N.W.2d 158 (Ct. App. 1985) (“[O]ne who intentionally and improperly interferes with another’s prospective contractual relation is subject to liability to the other for his pecuniary harm resulting from the loss of the benefits of the relation when the interference consists of (a) inducing or otherwise causing a third person not to enter into or continue the prospective relation or (b) preventing the other from acquiring or continuing the prospective relation.”). In addition, interference is defined as “any conduct or words conveying to [a third party] the defendant’s desire to influence [the third party] to refrain from dealing with the plaintiff.” WIS JI—CIVIL 2780. Thus, Cabintek’s arguments—inasmuch as they suggest River Valley tortiously interfered by

allowing or encouraging Becker Properties to enter into the lease rather than by obstructing or terminating the lease—plainly fail as a matter of law.

¶24 The dearth of factual support in the record for River Valley’s supposed interference is demonstrated by Cabintek’s continual references to Robert Becker’s statements and admissions, none of which show any wrongdoing by River Valley. *See supra* ¶16. In addition, River Valley had the right to aid Becker Properties in generating rental income with which to make mortgage payments. Further, Cabintek asserts that it was unaware of the forbearance agreement and of Becker Properties’ financial difficulties,⁷ and it faults River Valley for allowing it to enter into the lease without being informed of Becker Properties’ financial situation. However, Cabintek cites no authority for the proposition that River Valley had any duty to inform Cabintek, as a third party, of any aspect of Becker Properties’ financial situation, nor does Cabintek explain how River Valley’s failure to do so constitutes tortious interference. In fact, providing such information might have given rise to a tortious interference claim by Becker Properties if the disclosure of such information had prevented Cabintek from agreeing to the lease.

⁷ In its appellate brief, Cabintek states: “Unbeknownst to Cabintek at that time, Becker Properties was experiencing financial difficulties and was subject to a forbearance agreement with River Valley Bank, the secured lender on the subject property.” In an attempt to provide a factual basis, Cabintek cites to page two of its brief in opposition to River Valley’s motion for summary judgment. There is no evidentiary support for Cabintek’s claimed lack of knowledge regarding Becker Properties’ finances on this page.

Moreover, the majority of Cabintek’s citations to the record are to the same response brief. As such, Cabintek’s brief fails to conform to the requirements of the rules of appellate procedure. *See* WIS. STAT RULE 809.19(1)(e). We remind Cabintek that the rules of appellate practice are designed in part to facilitate the work of the court, not hinder it, and further violations may result in sanctions.

¶25 If Cabintek’s tortious interference claim is based on River Valley’s termination of the lease contract by foreclosure, such a claim also plainly fails as a matter of law. Given that River Valley established its lawful right to “interfere” with Cabintek’s leasehold interest through foreclosure, Cabintek’s tortious interference counterclaim was properly dismissed. By virtue of the undisputed mortgage and lack of a non-disturbance agreement between Cabintek and River Valley, River Valley had a prior lien on the property that entitled it to foreclose Cabintek’s leasehold interest as a matter of law. *See* WIS. STAT. § 708.02.

3. *Implied covenant of good faith*

¶26 Cabintek contends that the contemplated subordination and non-disturbance agreement obligated River Valley to abide by the implied covenant of good faith and fair dealing, and that it failed to do so. This breach occurred, according to Cabintek, when River Valley prevented the non-disturbance agreement from coming into existence. Cabintek makes these claims without citing any applicable law.⁸

¶27 “Every contract implies good faith and fair dealing between the parties to it, and a duty of cooperation on the part of both parties.” ***Beidel v. Sideline Software, Inc.***, 2013 WI 56, ¶27, 348 Wis. 2d 360, 832 N.W.2d 514. This duty exists in the performance of the contract. ***LDC-728 Milwaukee, LLC v. Raettig***, 2006 WI App 258, ¶11, 297 Wis. 2d 794, 727 N.W.2d 82. The duty of

⁸ The parties dispute whether River Valley prevented Cabintek from obtaining a non-disturbance agreement. Neither party indicates whether the circuit court resolved this factual issue, and Cabintek fails to explain how it is relevant to any claim. We decline to address the matter because it is immaterial to our analysis. The basic summary judgment standard looks only to whether material facts are in dispute. *See Hilkert v. Zimmer*, 90 Wis. 2d 340, 342, 280 N.W.2d 116 (1979).

good faith means that each party to a contract will not do something which will have the effect of injuring or destroying the rights or ability of the other party to receive the benefits of the contract. WIS JI—CIVIL 3044.

¶28 There is no dispute that Cabintek and River Valley never entered into a contract with each other. Without the formation of a contract, River Valley simply owed no duty of good faith and fair dealing to Cabintek. A party cannot violate the implied duty of good faith and fair dealing by failing to enter into a contract because the duty exists only once a contract has been formed. *See Hauer v. Union State Bank of Wautoma*, 192 Wis. 2d 576, 596-97, 532 N.W.2d 456 (Ct. App. 1995). Nor does Cabintek cite any authority in support of the proposition that a duty of good faith arises from a prior contract's contemplation that a new contract involving a third party will be executed. In fact, such interpretation is contrary to the reasoning of our supreme court, which has explained: "The duty of good faith arises because parties to a contract, once executed, have entered into a cooperative relationship and have abandoned the wariness that accompanied their contract negotiations, adopting some measure of trust of the other party." *Metropolitan Ventures, LLC v. GEA Assocs.*, 2006 WI 71, ¶36, 291 Wis. 2d 393, 717 N.W.2d 58, *opinion clarified on denial of reconsideration*, 2007 WI 23, 299 Wis. 2d 174, 727 N.W.2d 502. Thus, Cabintek's duty of good faith and fair dealing claim also plainly fails as a matter of law.

4. *Equitable subordination*

¶29 Cabintek asserts the doctrine of equitable subordination should apply to subordinate River Valley's mortgage rights to Cabintek's rights under its lease with Becker Properties. Again without citing any legal authority, Cabintek contends that the doctrine of equitable subordination is applicable simply because

foreclosure is an equitable action. Cabintek has not provided any case in which a court has applied equitable subordination—a doctrine arising from the federal bankruptcy code⁹—to a state court foreclosure proceeding.

¶30 We decline to extend the doctrine of equitable subordination to state foreclosure proceedings. While the circuit court has broad discretionary powers to grant equitable relief in foreclosure proceedings, the court may not violate clear statutory mandates. See **Bank of New York v. Mills**, 2004 WI App 60, ¶8, 270 Wis. 2d 790, 678 N.W.2d 332 (holding that a circuit court’s equitable authority in a foreclosure proceeding “may not be limited absent a ‘clear and valid’ legislative command”). Here, WIS. STAT. § 708.02 unambiguously determines the priority of River Valley’s and Cabintek’s respective interests in the property. Therefore, we conclude that there is a clear statutory mandate that cannot be disturbed in order to grant equitable relief. Accordingly, there is no valid argument in the law for concluding that the doctrine of equitable subordination applies in this case.

C. Automatic stay

¶31 Cabintek also contends the circuit court erred by failing to stay the foreclosure proceeding against Cabintek during the pendency of Joel Becker’s bankruptcy case. A state court has jurisdiction to determine whether the action pending before it is subject to a stay under the bankruptcy code. **GMAC Mortg. Corp. v. Gisvold**, 215 Wis. 2d 459, 471, 572 N.W.2d 466 (1998). The automatic

⁹ “Equitable subordination, which is founded upon estoppel, is the doctrine invoked by courts to deny equal treatment to creditors based on some inequitable or unconscionable conduct in which they have engaged, or a special position which they occupy vis-a-vis the bankrupt that justifies subordination of their claims.” *In re Credit Indus. Corp.*, 366 F.2d 402, 408-09 (2d Cir. 1966).

stay provision of the bankruptcy code provides that an individual's bankruptcy filing stays the commencement or continuation of any action or proceeding against him or her. *See* 11 U.S.C. § 362(a)(1). The language of § 362 is very broad and provides for the stay of virtually any type of creditor activity against the debtor or the debtor's estate. *Gisvold*, 215 Wis. 2d at 471.

¶32 Nonetheless, the automatic stay provision under the bankruptcy code applies only to those formal or informal efforts of creditors set forth in 11 U.S.C. § 362 and directed against the assets of the party that filed for bankruptcy. *In re Cloud Nine, Ltd.*, 3 B.R. 202, 204 (Bankr. D.N.M. 1980). “The automatic stay does not preclude creditor actions against other parties who have not filed proceedings in this Court.” *Id.* Similarly, the automatic stay provision does not bar a creditor from pursuing an independent claim against a garnishee because the judgment in favor of the creditor did not involve the debtor or any property of the estate. *See Kenosha Hosp. & Med. Ctr. v. Garcia*, 2004 WI 105, ¶¶58-59, 274 Wis. 2d 338, 683 N.W.2d 425, *decision clarified*, 2004 WI 137, 276 Wis. 2d 359, 688 N.W.2d 462, and *decision clarified sub nom. Kenosha Hosp. v. Garcia*, 2005 WI 1, 277 Wis. 2d 155, 691 N.W.2d 356.

¶33 Cabintek argues that because Joel was one of the guarantors under the forbearance agreements, the lawsuit involving the mortgaged property should have been stayed in its entirety. However, River Valley obtained a judgment of foreclosure against Becker Properties prior to Joel filing for bankruptcy. Becker Properties was the only party that executed the mortgage, and it was the sole owner of the property. River Valley named Cabintek as a defendant and sought to foreclose any right or interest Cabintek had in the property by virtue of the lease. River Valley did not name Joel as a defendant. This appeal arises solely out of the circuit court's decision granting River Valley's motion for summary judgment

against Cabintek and dismissing Cabintek's counterclaims against River Valley. The foreclosure of Cabintek's leasehold interest in the property in no way implicates Joel's bankruptcy estate.

¶34 Cabintek contends Joel's status as a guarantor of the debt and a party to the lawsuit establishes that he has "an interest" in the resolution of this case. Joel had no right, title or legally enforceable interest in the property. Thus, while in a general sense Joel may have a personal interest in the outcome of this case, Cabintek has not established that he had any legally protectable interest in the outcome of River Valley's claim against Cabintek or in Cabintek's counterclaims against River Valley. Cabintek offers no support in the law for its contention that, without a legally protectable interest in the properties at issue or the priority dispute, the circuit court was required to issue a stay.

¶35 Simply put, the resolution of River Valley's foreclosure claim against Cabintek and Cabintek's counterclaims and affirmative defenses against River Valley have no direct impact on Joel's interest in the properties at issue or in his bankruptcy estate. As the judgment foreclosing Cabintek's leasehold interest does not involve any creditor activity against Joel or his estate, we conclude there is no reasonable basis in the law for arguing that the automatic stay applies.

D. River Valley's motion for sanctions

¶36 River Valley requests attorney fees and costs on appeal because Cabintek filed its brief late and submitted a false certificate of service, and this appeal is frivolous. Because we conclude that the appeal is frivolous, we do not need to consider whether River Valley should receive fees and costs in connection with Cabintek's claimed late brief filing or false certificate of service. *See State v. Castillo*, 213 Wis. 2d 488, 492, 570 N.W.2d 44 (1997).

¶37 WISCONSIN STAT. RULE 809.25(3) authorizes this court to award costs and attorney fees upon determining that an appeal is frivolous. *Schapiro v. Pokos*, 2011 WI App 97, ¶20, 334 Wis. 2d 694, 802 N.W.2d 204. An appeal is frivolous if “[t]he party or the party’s attorney knew, or should have known, that the appeal or cross-appeal was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.” *Larson v. Burmaster*, 2006 WI App 142, ¶45, 295 Wis. 2d 333, 720 N.W.2d 134 (citation omitted). Whether an appeal is frivolous is a question of law. *Id.* An appellate court considers what a reasonable party or attorney knew or should have known under the same or similar circumstances. *Id.* To award costs and attorney fees, an appellate court must conclude that the entire appeal is frivolous. *Id.*

¶38 We agree with River Valley that Cabintek’s entire appeal was frivolous. As explained above, there was no basis in the law or facts of record for any of its arguments. For example, Cabintek acknowledges the circuit court’s ruling that the implied duty of good faith and fair dealing did not apply to River Valley because the parties had not entered into a contract, but it claims that somehow “this reasoning is circular.” Cabintek makes this assertion without providing any legal support or logic. Cabintek also argues that River Valley failed to establish a prima facie case for foreclosure of the lease, but it then acknowledges within the same brief that River Valley “may have made an initial showing that it was entitled to foreclosure.” Overall, with regard to each claim, as discussed above, Cabintek’s brief demonstrates a disregard of the applicable law and a lack of factual support or a distortion of the facts in the record.

¶39 Recognizing that all doubts about whether an appeal is frivolous must be resolved in favor of the appellant, *see id.*, ¶48, we conclude that

Cabintek’s entire appeal is frivolous. Cabintek’s submission in response to River Valley’s motion for sanctions is vague, misdirected, and unpersuasive. Cabintek does not argue that any of its arguments submitted without legal authority constituted a good faith argument for an extension, modification or reversal of existing law. It also states, in a conclusory fashion, that its arguments were supported with facts and citation to law, without any elaboration being provided. Moreover, its primary argument oddly seems to be that “the sheer amount of disputed facts and legal arguments cited by both sides of this dispute is the best evidence that the claims are far from frivolous.” We disagree. A multitude of frivolous arguments, requiring a respondent or this court to discredit each such argument adequately through multiple pages, does not itself demonstrate lack of frivolity. We therefore remand the matter to the circuit court to conduct a hearing to assess reasonable costs and attorney fees incurred by River Valley in responding to Cabintek’s appeal and issue an award accordingly.

By the Court.—Order affirmed and cause remanded with directions.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

